

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUSTIN LEE TIPTON,

Plaintiff,

vs.

No. CV 19-01025 WJ/KRS

WARDEN MARK BOWEN, et al.,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte*. Plaintiff Justin Lee Tipton is an incarcerated prisoner. He filed a Complaint for Violation of Civil Rights on November 4, 2019. (Doc. 1). The Court granted Tipton leave to proceed *in forma pauperis* on September 10, 2020 (Doc. 4). The Court also required Plaintiff Tipton to make an initial partial payment of \$20.94 or show cause why he should not be required to make the payment within 30 days of entry of the Order. (Doc. 4 at 1).

When a prisoner is granted leave to proceed *in forma pauperis*, § 1915 provides:

“The court ***shall*** assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner’s account; or (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.”

28 U.S.C. § 1915(b)(1) (emphasis added). Tipton’s 6-month inmate account statement shows that Tipton had an account balance sufficient to pay the initial partial payment but spends his money on commissary purchases. (Doc. 2 at 3-6). *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997). “[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the prison canteen or commissary, he should not be excused for failing

to pay the initial partial filing fee.” *Baker v. Suthers*, 9 F. App’x 947, 949 (10th Cir. 2001). More than 30 days has elapsed since entry of the Order and Plaintiff Tipton has not paid the \$20.94 initial partial payment or shown cause why he should be relieved of the obligation to pay. Nor has Tipton communicated with the Court since he filed the Complaint on November 4, 2019.

Plaintiff Tipton was ordered to make the required partial payment under § 1915(b)(1) or show cause why the payment should be excused but has failed to comply with the Court’s Order. The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n.3 (10th Cir. 2003). The Court will require Plaintiff Tipton to show cause, within 30 days of entry of this Order, why this action should not be dismissed for non-compliance with the Court’s September 10, 2020 Order. Failure to show cause or otherwise respond to this Order may result in dismissal of this case without further notice.

IT IS ORDERED that Plaintiff Justin Lee Tipton show cause, within 30 days of entry of this Order, why this case should not be dismissed for failure to comply with the Court’s September 10, 2020 Order.

A handwritten signature in black ink, appearing to read "Kevin Smeagoe". The signature is written in a cursive, flowing style.

UNITED STATES MAGISTRATE JUDGE